Editor's note: Appealed -- aff'd, Civ. No. S-76-91 (E.D. Calif. June 23, 1977), aff'd, No. 77-3578 (9th Cir. Mar. 17, 1980)

UNITED STATES
v.
C. FRED UNDERWOOD ET AL.

IBLA 75-401 Decided September 18, 1975

Appeal from a decision of Administrative Law Judge Dean F. Ratzman declaring Pumice Stone Mine Claims Nos. 1, 2, 5, 6, 9, 10, 13-16 null and void for a lack of a discovery of a valuable mineral deposit.

Affirmed.

1. Mining Claims: Common Varieties of Minerals: Generally -- Mining Claims: Contests -- Mining Claims: Discovery: Marketability

   Where the Government has presented a prima facie case that a claimed mineral is a common variety pumice and further that the pumice was not marketable at a profit as of July 23, 1955, the burden of showing by a preponderance of the evidence either that the mineral is an uncommon variety or that it was marketable as of July 23, 1955, devolves upon the mineral claimants.

2. Mining Claims: Common Varieties of Minerals: Generally -- Mining Claims: Discovery: Marketability

   A deposit of pumice is not an uncommon variety of pumice merely because it can presently be mined, removed and marketed at a profit. Rather, a mining claimant who asserts discovery of pumice must show that the deposit has a distinct and special value over other marketable deposits of pumice.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for the contestees; Charles F. Lawrence, Esq., Office of the General Counsel, United States Department of Agriculture, San Francisco, California, for the contestant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

C. Fred Underwood, Chloe Underwood and Jack D. Canon appeal from a decision of Administrative Law Judge Dean F. Ratzman, dated March 5, 1975, Contest California 448, involving the invalidation of 10 association placer claims, the Pumice Stone Mine Claims Nos. 1, 2, 5, 6, 9, 10, 13-16, located in secs. 14, 23, 24, 25, and 26, T. 43 N., R. 2 E., M.D.M., Siskiyou County, California. In his decision Judge Ratzman found that the Government had presented a prima facie case that the pumice from the claims was not marketable as of July 23, 1955, and that the testimony showed that the pumice was a common variety pumice such as was removed from location under the mining laws by the Act of July 23, 1955, 30 U.S.C. § 611 (1970). Further, he found that the contestees failed to overcome the Government case, and, indeed, had bolstered the Government's showing that the pumice was not marketable at the critical date.

On appeal the contestees present a number of arguments as to the incorrectness of Judge Ratzman's decision. A careful review of the record, however, shows that Judge Ratzman's decision was clearly correct and we hereby adopt that decision which is appended hereto. It is unnecessary to recapitulate the facts which the evidence adduced as they are set out in detail in the Judge's review. Rather, we will confine this decision to a discussion of a number of legal contentions presented in the appeal.

[1] The first issue which contestees raise is stated as follows: "The fact that other material is available does not constitute the substantial evidence required to support the conclusion of the agency, when as here, there is positive evidence in the record of marketability," citing United States v. Verrue, 457 F.2d 1202 (9th Cir. 1972). This statement confuses two discrete concepts. Assuming that the material located is a common variety pumice removed from location by the Act of July 23, 1955, supra, a question examined infra, and that the Government has presented a prima facie case that the mineral was not marketable at a profit as of July 23, 1955, as well as the present time, it devolves upon the mining claimants to preponderate with evidence showing that the mineral was marketable both on July 23, 1955, and at the time of the hearing. United States v. Barrows, 404 F.2d 749 (9th Cir., 1968), cert. denied, 394 U.S. 974 (1969); cf. United States v. Clear Gravel Enterprises, Inc., 505 F.2d 180 (9th Cir. 1974).

We agree with Judge Ratzman that the Government made a prima facie case of no discovery of a valuable mineral deposit as of July 23, 1955. It has been the consistent position of the Department that non-production of minerals is sufficient to raise a presumption that the claimed minerals were not marketable at a profit. See, e.g., United States v. Gibbs, 13 IBLA 382, 388 (1973); United States v. Stewart, 5 IBLA 39, 79 I.D. 27 (1972). Such was the testimony in the instant case, and a prima facie case was made on behalf of the Government.

Contestee's reliance on Verrue, supra, is totally misplaced. In Verrue, supra, the United States Court of Appeals for the Ninth Circuit, in reversing the finding of invalidity of a single claim, stated:

> It appears that the Secretary's decision was based solely on his findings that there were no sales of sand and gravel at a profit from the claim and that there was evidence of an abundance of material in the area other than on the Sandy No. 2 claim, despite the uncontradicted evidence introduced by appellee that the material on Sandy No. 2 was marketable at a profit during the 1946-1948 period. * * * In our opinion the lack of evidence as to sales and the fact that there was other material available does not constitute the substantial evidence required to support the conclusion of the Secretary, where, as here, there is positive evidence in the record of marketability. (Emphasis supplied.)

Id. at 1204 (footnote omitted).

Verrue, therefore, at most stands as a finding that the contestee in that case preponderated on the issue of marketability on or before February 10, 1948, the date of withdrawal. The situation in this case, however, is different.

There is, admittedly, much evidence in the record relating to marketability at the time of hearing. But, as Judge Ratzman found, there was no evidence that would indicate marketability as of July 23, 1955. Thus, C. Fred Underwood, one of the co-locators, engaged in the following colloquy with the Government's counsel:

> Q. Do you have any additional knowledge, a comparable knowledge as to what the conditions were prior to -- prior to July 23, 1955?
>
> A. July 23.
>
> Q. I mention that date. It's related to a law that changed the mining laws.

A. Yes. No, I'm sorry, I have no knowledge of these claims prior to our purchase of them, except what I have told you of our experience through Mr. Stewart who was using them prior to our purchase of the claims.

Q. Then I assume that you would not be able to state whether or not any material had been either sold from these claims or removed from them in, say, 1954?

A. I could not state that that was true, no, sir.

Q. And would that be true also from 1955?

A. Yes, sir.

Q. 'Six, 'seven, 'eight, 'nine, up through 1964?

A. Mr. Stewart obviously was removing pumice prior to our purchase, because, as I say, we had seen it in his yard in his use. But who used it, if anyone, besides Mr. Stewart, I have no direct knowledge, sir.

Q. Then up to the year 1964, the only knowledge of removal that you have is that material had been used by Mr. Stewart as of that date?

A. Yes, sir.

Q. And possibly earlier?

A. Yes, sir.

(Tr. 188-89).

In an exchange with Jack D. Canon, another co-locator, the Government counsel asked:

Q. Do you have any knowledge as to any preceding '71, 1971, as to the amount of pumice removed from the claims?

A. No.

* * * * * * *

Q. You weren't concerned with any efforts to market the material from the claims?

A. Yes.

Q. Prior to '71?

A. No.

(Tr. 270, 271).

Of course, actual sales of minerals from a claim is not an absolute requisite to a claim's validity. See, e.g., Verrue v. United States, supra; Palmer v. Dredge Corporation, 398 F.2d 791 (9th Cir. 1968), cert. denied, 393 U.S. 1066 (1969). But the colloquies set out above are virtually the only discussions in the instant case which do more than tangentially touch upon marketability on the critical date. Furthermore, as Judge Ratzman noted, the documentary submissions of the contestees tended to prove that the material was not marketable. For example, Exhibit FF, a 1956 publication of the State of California Department of Natural Resources, Division of Mines, entitled Pumice, Pumicite, and Volcanic Cinders in California, described the pit on the south side of Paint Pot Crater as abandoned. (Ex. FF at 28). See also Judge Ratzman's decision, infra.

When Congress passed the Act of July 23, 1955, supra, it was not stating that the common varieties of listed minerals lacked any economic value. What Congress said was that henceforth, regardless of any economic return which an individual might be able to obtain, common variety minerals could not be located under the mining laws of the United States. Had these claims been located after that Act for a common variety mineral the issue of marketability would be an irrelevancy, for such claims would be void ab initio. The only claims for common variety minerals saved from the proscription of the Act were those claims upon which a discovery of a valuable mineral deposit existed as of the date of that Act. The marketability test, as the Supreme Court has noted, is an effort "to identify with greater precision and objectivity the factors relevant to a determination that a mineral deposit is 'valuable'," United States v. Coleman, 390 U.S. 599, 602 (1968), and is an integral part of the determination of a discovery. In the same manner that the mere fact of present marketability will not permit the location of a claim for common variety minerals subsequent to the Act of July 23, 1955, so too, a showing of marketability some 20 years after the passage of that Act cannot resuscitate a claim located prior to the Act when it cannot be shown that the minerals from the claim were marketable on the critical date. We find that Judge Ratzman correctly held that there was no discovery of a valuable mineral deposit as of July 23, 1955.

[2] The second ground of appeal is that the pumice deposits are an uncommon variety of pumice, and as such are removed from the proscriptions of the Act of July 23, 1955, supra.

Contestees first attempt to show that the use of pumice in lightweight blocks provides those blocks with various advantages over conventional concrete blocks. We are unable to see the relevance of this observation. The Act of July 23, 1955, provides in pertinent part, "[n]o deposit of common varieties of * * * pumice, pumicite, or cinders * * * shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States * * *." Section 3 of the Act of July 23, 1955, 69 Stat. 368, 30 U.S.C. § 611 (1970). The fact that pumice has advantages over other aggregates does not, by any stretch of logic, determine that the pumice is an uncommon variety pumice. Without evidence that pumice, similar to that found in great abundance elsewhere, has a property giving it a special and distinct value over other pumice, it is a common variety no longer locatable under the mining laws.

The second thread of contestees' argument is that some pumice is not suitable for aggregate and that the pumice deposit embraced by the claims is so suitable and thus has a "distinct and special value" so as to except it from the prohibition of the Act of July 23, 1955. If contestees are saying that any pumice not suitable for aggregate has no commercial value, and that the special and distinct value of this pumice is that it has commercial value, they are in effect contending that the Act of July 23, 1955, supra, was a nullity. The only effect of the Act under such an analysis would have been that thereafter no claim could be located for worthless pumice. But the mining laws never envisaged a system wherein worthless minerals could be validly located. Thus, the Act of July 23, 1955, contemplated that common variety minerals, even though possessed of economic value, could not be located subsequent thereto. 1/

If, on the other hand, contestees are arguing that concrete aggregate use is a limited special use for which the great mass of pumice cannot be used, they run afoul of their own documentary submissions. According to charts in Exhibit FF the predominant use of all pumice mined in California from 1947 to 1953, was as

1/ A further argument that upholding the nullification of the claims will destroy possible jobs and other economic benefits which could arise from development of the claims overlooks the fact that common varieties of pumice may be disposed of by the Government in accordance with the Materials Act of 1947, as amended, 30 U.S.C. § 601 (1970).

aggregate in concrete, in 1951 rising to over 95% of all use within the State (Ex. FF, Figure 15 at 23). According to the Minerals Yearbook, 1971, (Ex. CC) concrete admixture and concrete aggregate accounted for 32% of the United States consumption of pumice in 1971 (Ex. CC at 1011). It is clear that the use of pumice as a concrete aggregate is common. We expressly find that the pumice involved embraced by the subject claims is a common variety. 2/

Contestees' other assertions have been substantially dealt with within the above analysis. Contestees' attempt to argue that marketability was not an issue is belied by the entire record of the hearing, as well as the fact that in order to show a discovery there must be a showing of marketability. Contestees, once again, are attempting to obscure the necessity of a showing of marketability by equating it with a requirement that the material must actually have been marketed at a profit. This Department has never imposed the latter test, but proof of a discovery presupposes the former.

2/ At one point in their brief on appeal contestees' raise the point that the pumice located within their claims is "block pumice" and so removed from the purview of the Act of July 23, 1955. Section 3 of the Act provides that "'Common varieties', * * * does not include so-called 'block pumice' which occurs in nature in pieces having one dimension of two inches or more." 30 U.S.C. § 611 (1970). Not once in the entire hearing did contestees ever assert that they had located a claim for "block pumice." Exhibit FF discusses the occurrence of "block pumice" in Northern California (Ex. FF at 26-27). It states, in part, "[p]umice suitable for the manufacture of scouring blocks has been produced from two places in the Glass Mountain area; from pumiceous obsidian blocks obtained from the surface of Glass Mountain and from pumice blocks mined from pumice breccia which crops out near the base of a pumice cone on the northwest side of the Glass Mountain obsidian flow." Id. at 26. Glass Mountain is located in T. 44 N. R. 4 E., M.D.M., whereas the claims in the instant case are in T 43 N., R. 2 E., a distance of well over ten miles. Furthermore, there was no testimony that any of the mined pumice was used as scouring blocks. Thus, the eleventh hour attempt to validate these claims as "block pumice" claims must be rejected as totally at variance with the facts.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

I concur in the result:

Joan B. Thompson
Administrative Judge

March 5, 1975

United States of America, Contestant	:	CALIFORNIA 448
	:	
	:	Involving Ten Placer Mining
v.	:	Claims in Secs. 14, 23, 24,
	:	25 and 26, T. 43 N., Range
C. Fred Underwood, Chloe Underwood, and Jack D. Canon, Contestees	:	2 E., M.D.M., Siskiyou County, California (Pumice Stone Mine Nos. 1, 2, 5, 6, 9, 10, 13, 14, 15, and 16

AMENDED DECISION

Appearances: J. P. Correia, Correia and Bacon, Attorneys at Law, Yreka, California — For Contestees

Charles F. Lawrence, Attorney, Office of the General Counsel, U.S. Dept. of Agriculture, San Francisco, California — For Contestant

MINING CLAIMS DECLARED NULL AND VOID

General Background

Ten unpatented placer mining claims are being contested by the Bureau of Land Management in this proceeding. The claims lie within National Forest boundaries, and the contest was initiated by the Bureau at the request of the Forest Service. The charges in the contest Complaint are as follows:

> "A. There are not presently disclosed within the boundaries of the mining claims, nor were there disclosed from before July 23, 1955, to the present, minerals of a variety subject to the mining laws sufficient in quantity, quality, and value to constitute a discovery.

B. The land embraced within the claims is nonmineral in character."

The contested claims were located on 1600 acres of public lands in May, 1916. A timely Answer filed on behalf of the contestees controverts the charges in the Complaint, and avers that the land "embraced within the claims, and each thereof, is mineral in character and has for many years been and is now mined for valuable minerals, to-wit, sand, stone, gravel, pumice, pumicite and cinders, and that said minerals have since the location of . . . said mining claims in 1916 and the years subsequent thereto been mined and operated as a mine and mines for the production of said minerals, all of which said minerals are valuable and have been and are found in quantity and quality merchantable and suitable for building purposes . . . and have always had and now have positive commercial value; . . ."

At a hearing held in Medford, Oregon on September 12 and 13, 1974, the attorney for the mining claimants introduced exhibits relating to pumice deposits, and use of pumice, in California. One of the documents, Exhibit FF, is Bulletin 174 of the Department of Natural Resources, State of California, entitled Pumice, Pumicite, and Volcanic Cinders in California (published in 1956), which states in part:

> "Pumice, pumicite, and volcanic cinders are products of explosive volcanic activity. They are mined from volcanic and pyroclastic rocks that range in age from early Tertiary to Recent and are widely distributed throughout California.
>
> * * *
>
> Deposits of pumice and pumicite range in size from a few thousand tons to hundreds of thousands of tons. They contain layers of pumice tuff that range from a few feet to well over 100 feet in thickness.
>
> * * *
>
> Some pumice and pumicite deposits were mined by underground mining methods. Present production, however, is from quarries where the material is mined by open pit methods. The loosely consolidated tuffs commonly require only a bulldozer or dragline to mine the

pumice . . ., whereas blasting is required to break down the pumice in well-consolidated tuffs.

Very little pumice, pumicite, or volcanic cinders is used directly as mined from the quarry. Some crushing and screening are necessary to produce materials and aggregate for specific uses, which include concrete aggregate, insulating plaster, interior and exterior stucco, abrasive, cleansing and scouring compounds, fillers in rubber and paints, cement additive, insecticide carrier, and soil conditioner.

* * *

The first recorded production of pumice in California was about 60 tons in 1883. From 1909 to the late 1930s most of the pumice and pumicite output in California was used for abrasive purposes. From the latter part of the 1930s to date more of the pumice output has gone into construction where it was used as aggregate in concrete either for precast blocks or slabs, or for monolithic structures. The total combined output of pumice and pumicite in California from 1909 to 1953 was 1,801,564 short tons valued at $9,059,030. * * *

* * *

During World War I the use of pumice as lightweight aggregate was investigated, but the actual production of pumice for aggregate purposes did not commence until mid-1930s. * * * . . . with the outbreak of hostilities in Europe in 1939, and the final culmination of World War II, the demand for lightweight aggregate materials for both military and domestic consumption increased markedly.

> Pumice properties throughout California and other western states were developed and numerous public buildings as well as domestic dwellings were constructed of pumice concrete. The widespread use of pumice as aggregate has extended into the post-war period and probably will continue to overshadow its use as an abrasive.
>
> * * *
>
> Most of the deposits of pumice, pumicite, and volcanic cinders in California are readily accessible to consuming markets by rail or highway transportation.
>
> These volcanic materials - pumice, pumicite, and volcanic cinders - are abundant in California and the reserves are large enough to support the vigorous expanding building industry." pp. 5 - 6.

Figure I in Exhibit FF depicts more than 40 locations scattered over the length and breadth of California, described as "areas underlain by Tertiary to Recent volcanic rocks, and major regions under which the deposits of pumice, pumicite, and volcanic cinders are discussed." By far the largest of these areas is shown in northeastern California. A listing of more than 35 sources of pumice, situated in 19 California counties, is provided in Exhibit FF, pp. 90 - 92.

The contested claims lie within an area of pumice which is at least 16 square miles in area. Exh. FF, p. 27. Also, a ten square mile area of pumice (Glass Mountain) lies approximately ten miles to the east.

Figures 13 and 15 in Exhibit FF are charts which disclose that production of pumice and pumicite in California rose to more than 260,000 short tons in 1951, but by the 1953-1954 period had declined to the 75,000 - 80,000 range. The decreased production was attributed "almost wholly" to the increased demand for a competing material, expanded and sintered shale aggregate. Exhibit FF, p. 6.

Exhibit FF provides a description of pumice areas which were commercially operated in the mid-1950s. The principal properties operated for aggregate in Siskiyou County at that time were the Thompson Pumice Company Deposit and the Boorman Pumice Products Deposit. Thompson Pumice had available

two sections of land and operated one quarry 600 feet by 300 feet and another 300 feet by 150 feet. The pumice was hauled "over well graded roads about 11 miles to Tionesta [California], a small settlement on the Great Northern Railroad, where it is loaded directly into gondola cars for shipment, or crushed and screened for shipment." Thompson supplied pumice to processing plants at Klamath Falls, Oregon, to block plants in the San Francisco Bay area, and to local block plants.

The Boorman concern had pumice in two sections and quarried from pits that were served by a "well graded dirt road that leads to Tionesta about nine miles east." Boorman had mined and shipped large tonnages of pumice from its property to block plants in Klamath Falls, Oregon and in the San Francisco Bay area. In 1953 the main Boorman pit measured about 100 feet by 100 feet.

Volcano Products at one time mined and shipped pumice from unpatented mining claims, including 3411 acres near Glass Mountain. However, Exhibit FF does not state specifically that Volcano Products was an active mining operation in the 1950s. pp. 25 - 26.

Exhibit FF contains information on the Little Glass Mountain deposit (which lies 8 - 10 miles west of the operating mines which are discussed above). It states that most of the Little Glass Mountain pumice is comparable to the pumice at Glass Mountain. The Bulletin provides the following information relating to the location occupied by the contested claims:

> "Perhaps the first pumice mined in this section of Siskiyou County was at an abandoned pit on the south side of Paint Pot Crater as early as 1905 . . . Considerable research was done on this pumice to determine its field of usefulness and it was found that the pumice was suitable for the manufacture of concrete blocks. Latest recorded production was in 1935 (Averill, 1935, p. 335) although there has been a small amount of pumice mined for test purposes since then." Exh. FF. p. 28. Emphasis added.

Another source of pumice on or near Little Glass Mountain described in Exhibit FF is the Pumice Stone Mines property, 2560 acres of easily mined pumice with large reserves. As of 1956 there had been very little pumice mined from Pumice Stone Mines.

Because it was named as the source of materials for the Shastalite Brick Company, of Yreka, California, the Hotlum Cinder Deposit should also be mentioned. The contestees regard the Yreka area as one to be served from the contested claims (at least in the 1970s). Exhibit FF states that in June, 1955 a quarry at Hotlum, running 250 feet along a canyon, with a face averaging 20 feet high, was the source of materials for the Shastalite block operation and for other nearby towns. The Bulletin states that the Hotlum cinders weigh about 40 pounds per cubic foot and were being used for making concrete building blocks. p. 29.

Exhibit DD, Geology of Northern California, Bulletin 190 of the California Division of Mines and Geology, issued in 1966, reported that about 30,000 tons of pumice and pumicite (about one-third of the annual production in California) were mined in Northeastern California regions "with almost all coming from deposits at Glass Mountain, eastern Siskiyou County." Emphasis added. It describes the quarrying and trucking of the material in the Tionesta area, and in Modoc County. There is no reference to production at Little Glass Mountain, Pumice Mountain or Paint Pot Crater. Exhibit EE, a 1961 Siskiyou County Economic Resource Inventory, explained that the county's deposits of pumice, pumicite, volcanic cinders and perlite constituted "a stable mineral industry base," but that "most of these have only been worked in a relatively small way because of remoteness."

Another in the series of exhibits introduced on behalf of the mining claimants, Exhibit BB, Bulletin 630 of the Bureau of Mines (Department of the Interior) 1965 edition, refers to one of the factors involved in the production and profitable disposal of pumice:

> "Pumice used as a concrete aggregate, railroad ballast, and for road surfacing is sold in a low price market and must compete with many substitutes. Hence the market area for any deposit is limited by transportation costs and the availability of competitive materials. * * *"

In setting forth the above facts, which either are not disputed, or are provided in documents added to the case record by the contestees, I have directed attention to the general pumice supply and pumice marketing conditions in 1955 and the period extending from that year into the mid-1960s. The situation with respect to access to the contested claims, and the overall requirement for pumice blocks (as opposed to other materials such as fir and hemlock lumber) has changed substantially in recent years.

An effort was made by the contestees to establish and maintain facilities on the claims in order to supply pumice for concrete block facilities. This activity was discontinued. At the hearing, individuals who have leased

the claims outlined their proposals for utilization of the pumice deposit, and their expectations for invading and capturing the market. However, all of this comes almost two decades after passage by the Congress of the legislation which required the existence of a discovery of valuable minerals on each claim in the summer of 1955. Rather than speculate on the prospects of the lessee's new business venture, I will direct my attention principally to the charge that there was no disclosure "from before July 23, 1955, to the present, of minerals of a variety subject to the mining laws, sufficient in quantity and quality, and value to constitute a discovery." The quantity and quality of the pumice has not been seriously questioned. This contest actually comes down to the inquiry which arises time after time in proceedings of this type -- when a material exists in quantities vastly exceeding market requirements, which of the unpatented mining claims located for that material are considered to contain a discovery, and which are to be rejected on the basis that material obviously could not have been marketed from each and every one of the available sources.

Summary of Relevant Evidence

Mr. Emmett Ball, a graduate mining engineer with more than 20 years of experience in that profession, testified for the Forest Service. In 1971 he inspected the contested claims at a time when the present claimants wished to haul pumice to Yreka, California to be used as aggregate in concrete blocks. Mr. Ball and representatives of the contestees drove to "three places . . . that somebody had mined in prior years." Tr. 9. Two of those places were marked by Mr. Ball on Exhibit 9, an enlarged 1955 aerial photograph. Excavated area "1" and most of area "2" are on Pumice Stone Mine Claim No. 15, and the remainder of area "2" is on Claim No. 14. The third location does not show as a worked or excavated area on the 1955 photograph (Exhibit 9), but was marked as area "3" in Claims 13 and 14 in that Exhibit. On July 29, 1971, when the examination was made, Mr. Ball did not learn when pumice had been removed from areas "1", "2" and "3". The first removal of material from area "3" was between 1961 and the summer of 1971. Tr. 11, 16. The mining claimants wished to start their 1971 mining and hauling activities in Area "3". Areas "1" and "2" are on the east side of Paint Pot Crater, which could be reached from a road system that existed in 1955. Area "3", on the west side of Paint Pot Crater, was not served by a road in 1955 (Exhibit 9) or in 1961 (Exhibit 8).

Mr. Ball found that there is pumice "practically everywhere" on the contested claims, in varying depths. His observations confirmed that "five plus" square rules of pumice cover the terrain in the vicinity of the claims, and that the Glass Mountain deposits to the east approximately ten airline miles away were being mined. Assuming an average

depth of a yard, he estimated that there are almost eight million yards of pumice on the contested claims. Mr. Ball did not see block pumice on the claims -- he observed material running from very fine up to two inches in diameter. Tr. 15. Other than quantities required for testing, the mining claimants had not removed any pumice as of July 29, 1971. The claims had been transferred to them approximately six weeks earlier. Exhibit 2.

Only a few loads of pumice have been removed from areas "1" and "2" in recent years. The presence of trees averaging seven to nine years old on these areas demonstrates that they have been undisturbed for a substantial period of time. There are indications that samples have been taken from Claims "1", "2", and "3". Tr. 20.

In their discussions with Mr. Ball, the claimants did not express an interest in material on the claims other than pumice. He found that the roads in and around the contested claims had been constructed with a bulldozer, and that the pumice, "the native material," had been used for the road base. He gave as examples roads shown on Exhibit 9, including the one which runs from the bottom of the photograph (on the right side) to an intersection which can be seen in the upper one-third of that exhibit. Tr. 24.

The widow of the former owner of Stewart Masonry in Redding, California informed Mr. Ball that Stewart Masonry leased the contested claims in "about 1962" and hauled some pumice soon after that. At the time of his conversation with Mrs. Stewart, in 1972, Stewart Masonry was no longer hauling appreciable quantities of pumice from the area and had not done so for several years. Tr. 27. A letter dated July 19, 1963, from the District Ranger of the Forest Service to Mr. Burt Stewart (contained in Exh. AA) refers to the hauling of pumice from Paint Pot Crater and advises that imposition of the fee might be necessary "for maintenance of the road between your claims and Highway 89."

Exhibit AA also contains a copy of a November 22, 1963, letter from the attorney for the Scott Estate, which had leased the claims to Stewart Masonry. That letter, directed to a Forest Service official, states:

> "It is my information, from hearsay, that about the year 1916 or 1917, there was installed on the pumice claims at or near Paint Pot Crater a cement block making machine, but due to the war conditions it was operated only a year to two and was discontinued. I believe this machinery has been entirely dismantled.

J. H. Scott acquired these claims about the year 1950 . . . and thereafter set about having various tests made as to the quality of the pumice, and found it to be quite suitable for use in such projects as the Glen Canyon Dam, but due to the transportation costs he was not capable of meeting the bids from a closer source of pumice supply. Thereafter, but subsequent to 1955, he developed a market for the light rock, sometimes called "Feather Stone," which is used by nurserymen, and landscape planners, and found that he could haul and sell this material at a substantial profit.

* * *

We have now negotiated a contract with Stewart Masonry . . . and this company finds it convenient and profitable, and the material adapted to their uses. The transportation in this regard is merely a trucking haul from the claims into Redding.

However, I take the view that it is immaterial whether or not a profitable operation on the claims was conducted prior to July, 1955. A miner lives on hope, and the question simply is one of whether or not as a reasonable man he would spend money in an effort to produce a profitable material from the claims involved. Certainly J. H. Scott spent hundreds of dollars testing the material in an effort to develop a market therefor. His tests proved the material suitable for the uses for which pumice is usually made, <u>but due to transportation costs he was never able to develop a market to which he could ship the material</u>." Emphasis added.

The Forest Service official, District Ranger D. L. Biddison, responded to the above letter, informing the Scott Estate's attorney that from the information provided he (the Ranger) believed "the claim is valid because a commercial use of a common variety was made before July 23, 1955." The only use described in the attorney's letter which could fall in that category was the reported operation of a concrete block machine for a year or two "about the year 1916 or 1917."

On February 5, 1966, Mrs. Stewart wrote the District Ranger after Stewart Masonry was requested to share in the maintenance costs for the Harris Springs Road. She said that in 1965 Stewart Masonry had used the road "a total of thirty six (36) times, which usage was substantially greater than prior years." She also indicated that continuation of the lease from the Scott Estate "may not be desirable."

The case record does not clearly establish that the removals by Stewart were from areas "1" or "2" on Exhibit 9. From his observation of the size of the trees which have taken root and grown, Mr. Ball testified at the hearing that the last working in those areas was at least eight years ago. Tr. 86.

According to Mr. Ball, since 1965 the Forest Service has maintained a price of 20 cents per cubic yard for pumice which has been available from lands under its jurisdiction. However, there was no showing that sales have been made by the agency at that price or any price.

Future removals of pumice by the contestees, and their present plans for development of the contested claims are tied to utilization of the new means of access extending into Paint Pot Crater from the west. Exhibits 6A and 6B show that the entire system of roads lying to the west was lacking in 1961. A sixteen mile stretch of road with favorable grades was paved within the last few years at public expense under Forest Service contractual arrangements. In his cross examination the counsel for the contestees made it clear that this "newly paved road" is the one clients would use for transporting pumice. Tr. 51, 61 - 63. Tr. 76.

Mr. Ball conceded that workings on the claims have been there for some time, but he is not able to provide information on the specific time periods when the old excavations were made. On the basis of his investigation he does not consider any of the ten claims to be valid. Tr. 80. He concluded from evidence on the ground and from the aerial photographs that very little or no pumice was removed "especially between . . . July, '55 and July of 61". Tr. 89. He remarked that "to take pumice out you have to have roads, because its a low priced commodity and . . . if you were going to pack it out, it would be just for sampling." Tr. 91.

At the time of the hearing, blocks were being manufactured, and pumice was being sold from the location 10-12 miles to the east of the contested claims (the Tionesta area) where commercial pumice operations had been conducted in the mid-1950s. Tr. 100.

District Ranger Lynn Trail, an employee of the Shasta-Trinity National Forest, testified from Forest Service records as to quantities of pumice hauled by Stewart Masonry from the area of the contested claims from the summer of 1965 through 1970. An average of 23 loads was hauled annually in this six year period. If it is assumed that each load was 25 yards of material, Stewart Masonry would have obtained an average of 575 yards per year from the deposits west of Little Glass Mountain. Tr. 106 - 108. This would have been taken on the "old route," down the Harris Springs Road, to Highway 89 and then to Redding, on roads lying generally to the south and west of the claims. Tr. 114, 121.

Mr. Fred Underwood, one of the mining claimants, is a principal stockholder in Interstate Stone Company, of Medford, Oregon, the sole owner of Shastalite Block Company, in Yreka, California. He purchased an interest in Interstate Stone in 1964, and obtained concrete block equipment from Stewart Masonry in Redding, California, in the expectation that blocks would be manufactured at Medford. Because of the lack of funds, the Medford block plant was never placed in operation. Tr. 139.

In 1969 Interstate Stone bought Shastalite Block. Mr. Underwood stated that the previous owner had quit making pumice blocks because of the excessive cost of pumice. He had restricted his output to heavier cinder blocks, and his business had gone downhill to the point that he was forced to sell. Tr. 140. Mr. Underwood took charge of the block manufacturing activities in Yreka, at first utilizing pumice purchased in Bend, Oregon. In the spring of 1971 the contestees learned that the unpatented Scott claims (the subject of this decision) might be available, and they purchased the claims in the following summer.

In 1971, Interstate Stone (the contestees) hauled approximately 585 cubic yards of pumice on the "old route," through the McCloud Ranger Station. Tr. 142, 145. Mr. Underwood asserts that in 1972 1280 cubic yards were hauled, using the same route, proceeding south and west out of the claims.

The records of the Forest Service show only 3 loads for 1972, but the explanation for this may be that a new truck driver for the mining claimants did not leave a record of each load at the McCloud Ranger Station.

Expenditures on the claims by the contestees were $1086 in 1971, $2068.50 in 1972 and $3750 in 1973. Because of repeated "instances of sabotage to loading machinery" they stopped hauling pumice from the claims in 1972. According to Mr. Underwood "it [damage to machinery] got so bad that we even

sent our truck to Bend late in the fall of that year for a load of pumice to keep us going." Tr. 150. They also obtained pumice from Bend in 1973 and 1974. No pumice was obtained from the claims in 1973 and 1974 up to the time the hearing was held. The added cost of maintaining a guard at the site to protect the loading equipment made continuation of the hauling operation infeasible. Tr. 195, 229.

Mr. Underwood tested the claims with an auger, and found that granular pumice extended to a depth of at least three feet on Claim 1 and Claim 2. On some of the other claims he was not able to reach the bottom of the deposit -- this was the situation on Claim 10, which is between Paint Pot Crater and Pumice Mountain. Tr. 156 - 158. His conservative estimate of the total quantity on the ten claims is approximately 12,900,000 cubic yards. He has concluded that it may run as much as 20,000,000 cubic yards. Tr. 236.

When he was questioned about the present demand for pumice blocks, Mr. Underwood replied:

> "It's increasing. This is basically a timber area and masonry has come along slowly, but the increased price of timber, lumber due to the scarcity of timber, our block is becoming more and more competitive as the days go by." Tr. 173.

Stewart Masonry of Redding operated without a crusher in its production line after the contestees acquired the claims under consideration, and no longer obtained pumice from those claims. Tr. 174.

Mr. Underwood stated that "pumice is our prime interest" and that it was the only material that had been removed from the claim area and utilized. Tr. 188. It was his understanding that Mr. Stewart had used pumice from the former Scott claims in 1964 or 1965. He is unable to state whether pumice was sold or removed from the claims in 1954 or 1955. Tr. 189.

All excavations and removals of substantial quantities of pumice by the contestees have been from sites on Claims 13, 14, 15 and 16. The contestees, and the concerns which they operate, had not sold pumice to others. Tr. 199. This would not have been practicable, since facilities for crushing the pumice had never been installed. Tr. 201. The claims lie at altitudes above 6000 feet and due to snow conditions the contestees' work has been restricted to the summer months and part of the fall.

The improvement in access to the claims which was completed in 1973 was described by Mr. Underwood:

> ". . . our hauling [in 1971 and 1972] was almost committed to the southern areas because that's the only access

> road that was feasible to operate a truck over. Since that time the road, I think it is known in the Forest Service as the Red Rock Road, has been paved from Forest Service funds . . . and its within -- I'm guessing -- within 200 yards of the northern boundary of our northern claims. And with this in mind, the gentleman who is leasing the claims has now applied for a permit to operate over this road, which makes it much more accessible and less haul mileagewise." Emphasis added. Tr. 214.

Mr. Underwood agreed that on the basis of their utilization of the material between 1971 and the date of the hearing "well over a thousand years supply" of pumice exists on the contested claims. Tr. 237. He and his co-owners have made the claims available to a group which holds the claims under a 1974 lease and has plans for the removal of greatly increased quantities of pumice.

Another of the mining claimants, Mr. Jack D. Canon, has been in the block business since 1947. When he came to Medford in 1954 the Bend, Oregon, pumice deposits were the closest available source of material for block making in Southern Oregon. Tr. 240. He understood that Bert Stewart in Redding, California was obtaining his pumice in 1954 from another source -- "some claims in Northern California." However, he is not sure that the pumice used by Stewart Masonry came from the claims which are the subject of this contest. Tr. 242. He confirmed that he and the Underwoods had made no sales of pumice to others, indicating that they were "most interested in our little block plant in Yreka." Tr. 261, 263.

Mr. Edward W. Morris and Mr. John R. Roof hold an interest in a new corporation, Pumice King Mining Company, which has leased the claims from the contestees. Mr. Morris executed a lease in 1973 after sampling some of the claims. The lease was re-executed in 1974, after Mr. Roof and a Mr. Warren decided to join him in an attempt to sell pumice from the claims. Tr. 280.

Mr. Roof testified that in 1974 he looked into the question of the marketability of pumice, stating:

> "I determined the fact that our economic situation compared to a lot of the applications of pumice has changed; that there indeed was a profit to be gathered by the deposits up on the ten mining claims . . ." Tr. 291.

Some of the factors taken into account by Mr. Roof were (i) his determination that he could undercut the Bend pumice sales operation on price in areas such as Grants Pass and Medford, Oregon and Redding and Yreka, California (ii) that the pumice could be dyed and shipped for decorative or landscaping uses, and (iii) that in the current energy crisis pumice would be required for mixing with soil to retain fertilizer, which is selling at inflated prices. Tr. 292 - 294.

It is clear that Mr. Roof's plans are tied wholly and directly to the new paved Forest Service (Red Rock) road. The corporation established its "plant site" on that road, and Mr. Roof describes his transport plan as one under which trucks would go through MacDoel 100 miles to Yreka and 144 miles to Redding. Tr. 201, 312. Referring to the inadequacy of the access available prior to 1973, he said:

> ". . . I and my wife had come down over that miserable road from Paint Pot Crater to McCloud. If I had to haul over that road, I would have scrapped the whole venture right then." Tr. 305.

His plan is to take pumice from the claims to the plant site sixteen miles "over beautiful paved road; Forest Department road." Tr. 302.

Summary of Applicable Law

The Act of July 23, 1955, 30 U.S.C. § 611 (1970) amended the Materials Act of 1947, 30 U.S.C. § 601 (1970) to provide:

> "No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders . . . shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws . . . ." Common varieties . . . does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more. * * *"

Under the above-cited 1955 statute Congress withdrew, as of July 23, 1955, common varieties of sand, stone, pumice, pumicite and cinders from location under the mining laws; therefore, it is incumbent upon one who located a

claim prior to that date for a common variety of one of the materials listed in that Act to show that all the requirements for a discovery, including a showing that the materials could have been extracted, transported and marketed at a profit, had been met by that date. Palmer v. Dredge Corporation, 398 F. 2d 791 (9th Cir. 1968); Herb Penrose, 10 IBLA 332 (1973).

Once the Government has established a prima facie case that a discovery is lacking, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery falls upon the claimant. Foster v. Seaton, 271 F. 2d 836 (D. C. Cir. 1959); Independent Quick Silver Company, 72 I. D. 367 (1965).

The mining statutes do not expressly define a discovery. However, it has been held that one exists where:

> "* * * minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a profitable mine . . ." Castle v. Womble, 19 L. D. 457 (1894).

The above-quoted definition is approved in United States v. Coleman, 390 U.S. 599 (1968), which holds that in determining whether a mineral deposit is valuable, the Secretary of the Interior may require a showing that there is a reasonable expectation based upon the circumstances known at the time that the mineral can be extracted, removed and marketed at a profit. It is stated in Coleman:

> ". . . Under the mining laws Congress has made public lands available to people for the purpose of mining valuable mineral deposits and not for other purposes. The obvious intent was to reward and encourage the discovery of minerals that are valuable in an economic sense. Minerals which no prudent man will extract because there is no demand for them at a price higher than the cost of extraction and transportation are hardly economically valuable. Thus profitability is an important consideration in applying the prudent man test . . . ."

Expenditures for exploration or research, but not on the initiation of actual mining operations, are evidence only that further exploration or research may be justified. Such expenditures do not constitute evidence that the mineral exposed is valuable, or that prudent men would be justified in initiating actual operations. Frank W. Winegar, et al., 16 IBLA 112, 128 (1974).

The following principle is set forth in United States v. Paul M. Thomas, et al., 1 IBLA 209, 78 I.D. 5 (1971):

> ". . . it must be shown . . . that there was a valid discovery on each claim at the time of application for patent. That is, irrespective of the date on which a discovery may have been made, the claims are now invalid if, because of . . . change of economic conditions, cessation of a market for the material, or some other cogent factor, the value of the minerals will not justify further expenditures for the development of the mine."

This principle is of equal applicability to contest proceedings initiated prior to application for mineral patent. See Mulkern v. Hammitt, 326 F.2d 896 (9th Cir. 1964).

In this proceeding it must be shown that J. H. Scott, who owned the unpatented placer claims on July 23, 1955, as to each claim had found a mineral deposit which, as of that date, satisfied the prudent man test as complemented by the marketability test. United States v. Bunkowski, 5 IBLA 102, 120 (1972); United States v. J. L. Block, 12 IBLA 393 (1973).

The logical conclusion to be drawn from the above rulings is that where common variety materials were not marketable July 25, 1955, or during a prolonged period subsequent to that date, any validity that an original location may have had is lost. The recovery in later years of a profitable market could not relate back to pre-1955 locations and restore validity to such locations.

Under the statute providing that no location of a placer claim on Federal lands should include more than 20 acres for each individual claimant, the individual transferee of an association placer claim of more than 20 acres who, after the transfer, made a discovery is not entitled to a patent to more than 20 acres immediately surrounding the discovery. United States Borax Company v. Ickes, 98 Fed. 2d 271 (1938).

In United States v. Urban Harenberg, 11 IBLA 153 (1973) the Interior Board of Land Appeals concluded that the evidence showed that there had been a physical exposure of cinders (a common variety) on a claim prior to July 23, 1955. It stated, however, that the mere uncovering of the deposit was not enough to constitute a qualifying discovery. It must also be established that the deposit was valuable within the meaning of the mining law. The Board concluded that the value of the deposit is tested by economic standards," i.e., whether, prior to July 23, 1955, the material could have been mined, removed and marketed at a profit." In addition, it held that utilization of the material as base material for roads, common fill and the like would not validate that claim because the mining law has never countenanced the location of claims for such purposes.

The sale of minor quantities of material at a profit, or the disposal of substantial quantities at no profit, does not demonstrate the existence of a market for the material obtained from a particular mining claim which would induce a man of ordinary prudence to expend his means in an effort to develop a valuable mine on the claim. Adrian Edwards, 9 IBLA 197 (1973). It is the obligation of a mineral claimant to maintain adequate business records or other means of proof to support his contentions as to sales and marketability at a profit of the mineral material in his claim. Herb Penrose, 10 IBLA 332 (1973).

Analysis

The contested claims were located in 1916, perhaps for materials to be used in the experimental applications of pumice which are mentioned in Exhibit FF, perhaps for some other purpose. Certainly there is no indication in the case record that during the 45 year span immediately after the 1916 locations pumice from one or more of the claims was utilized commercially as aggregate or as an abrasive. This pumice is in a very remote location, and until 1974 could be transported only to the south and west, a route which one pumice block operation in Redding, California used in the 1962-1970 period. The contestees took pumice to Yreka over this route during portions of the 1971 and 1972 hauling seasons, but after that period of activity on some of the claims went back to a deposit near Bend, Oregon as their source of supply.

The California counties which lie north of the City of Chico are sparsely populated, and are in timber country. Dimension lumber has been the most popular building material. As Mr. Underwood explained masonry blocks have been used for larger structures, such as schools or motels, with increased use when timber reached the peak of the price cycle.

The pumice concerns which have disposed of substantial quantities for use as aggregate (e.g., those located near Tionesta and Napa, California, and near Bend, Oregon) have enjoyed, until the last year or so, a great advantage over those who contemplated developing the contested claims. The other deposits are a relatively short distance from a good highway or railroad. In contrast the road from the claims down to Highway 89 provided poor access. The lessee of the mining claimants, Mr. Roof described it as a "miserable road" that he would not have used for pumice hauling.

Some pumice had been loaded and utilized (or at least moved to another location) from two locations on Claims 14 and 15, prior to August 1, 1955. This pumice could have been used on the roads in the area. It could have been moved when excavations were made in the course of exploration or as part of assessment work. There is no proof that pumice from these claims was being transported to the Redding block plant during the 1950s. Exhibit 9 shows that in 1955 there were no roads into or near Claims 1, 5, 9 and 13. That exhibit also shows that there are no excavated or scraped areas on Claims 2, 6, 10 and 16.

The 1963 letter from the attorney for the Scott Estate confirms the conclusion drawn by the contestant's mining engineer -- that a discovery of valuable minerals never existed on any of the claims prior to July 23, 1955. He referred to a short-lived effort to make cement blocks prior to 1920, the inability to compete when pumice was purchased for Glen Canyon Dam and use of some pumice in landscaping "subsequent to 1955." There is no referrer to a use of, or requirement for, the pumice for blocks in Redding or Yreka in 1955, or even in 1960. There is no evidence that the increased need for pumice in the 1939-1945 period resulted in renewed activity or production on these claims.

In 1955 vast quantities of useable pumice existed in Northern California, and the pumice required for commercial uses in the mid-1950s was supplied by concerns that were more favorably located from the standpoint of the type of available road, and the distance from the deposit to a major transportation artery.

There is no proof of this, but if the Stewart plant at Redding had obtained and profitably utilized more than 500 cubic yards per year from area "1" or area "2" depicted on Exhibit 9 during the time period required by the statute (rather than one commencing in 1962 or 1963), it could be ruled that the Scott Estate had a discovery on a claim surrounding one of those areas. There are at least 100,000 to 200,000 cubic yards of pumice on each 20 acre area within the better parts of Claims 14 and 15. Thus one 20 acre location would have provided a supply for the Stewart operation for more than 100 years.

The above analysis serves to place this contest in perspective. Finding pumice on public lands, establishing claim boundaries and performing

assessment work year after year is not the same as having a commodity which could have been marketed at a profit. It is clear that the 1974 plans and expectations of the Pumice King group, the lessee of the mining claimants, are wholly related to the new paved Forest Service road which makes it feasible to transport pumice to a rail facility at MacDoel, and to reach Yreka, Medford and Grants Pass over a much shorter route. This means of access has nothing to do with the circumstances in 1916 or 1955. When the Congress withdrew common varieties of pumice from location under the mining laws in 1955, it provided for disposals of such pumice by agencies upon the payment of adequate compensation. A common variety of pumice which becomes transportable and marketable as the result of completion of a new Forest Service road fifteen or twenty years after such Congressional action obviously should be sold pursuant to the 1955 legislation. The new road cannot give new life to invalid old claims.

Final Conclusion

Mr. Ball's testimony, and the documents and photographs introduced when he testified established a prima facie case that each of the contested claims lacked a discovery of a valuable mineral prior to and on July 23, 1955. The pumice on the claims is a common variety material.

Much of the evidence submitted on behalf of the mining claimants is confirmatory of the first charge in the complaint. Exhibit FF, for example, describes the producing pumice operations that were readily accessible by rail or highway. That exhibit, a 1956 publication, also states that the latest recorded production from the "abandoned" Paint Pot Crater pit was in 1935. Exhibit 16 shows that the last of the original locators included the claims in a Deed of Trust when he borrowed $5000 in 1936, and by the fall of 1941 his interest had passed to his creditors. The claims were transferred to individuals five times between October, 1941 and 1948. The record for 1954, just one year prior to the significant year in this contest, demonstrates a serious decline in the need for pumice. There is no evidence in the case record to indicate that the outlook for profitable disposal of pumice from any area on the claims was favorable during the two or three decades immediately prior to July 23, 1955.

The contestees have not shown by the preponderance of the evidence that a discovery of a valuable mineral existed on or prior to July 23, 1955, on any of the placer claims which are the subject of this contest. Accordingly, the contested claims, known as Pumice Stone Mine Nos. 1, 2, 5, 6, 9, 10, 13, 14, 15 and 16, are hereby declared null and void.

A review of the second charge in the complaint, that the lands within the concerned with the factors discussed above. For example, an inquiry would be required as to the profitability of pumice disposal or utilization, and as to the feasibility of expending funds for development. When the

issue raised by this charge is considered, the prescribed standards are applied to ten acre units. See State of California v. E. O. Rodeffer, 75 I.D. 176 (1968) and U.S. v. Henrikson, 70 I.D. 202 (1963). Because the parties directed their presentations primarily toward the first issue (lack of discoveries of a valuable mineral at the required time) and the case record in my view calls for only one conclusion on that issue, I will not give further consideration to the second charge.

Dean F. Ratzman
Administrative Law Judge

Appeal Information

An appeal from this decision may be taken to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (revised as of October, 1973). Special rules applicable to public land hearings and appeals are contained in Subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) in order to facilitate transmittal of the case file to the Board. If the procedures set forth in the regulations are not followed, an appeal is subject to dismissal. The adverse party to be served with the notice of appeal and other documents is the attorney for the United States Department of Agriculture, whose name and address appear below.

Enclosure: Additional information concerning appeals.

Distribution:
J. P. Correia, Attorney at Law, Correia & Bacon, P.O. Box 510, Yreka, California 96097 (Cert.)
Charles F. Lawrence, Attorney, Office of the General Counsel, U.S. Dept. of Agriculture, Room 834, 630 Sansome Street, San Francisco, California 94111 (Cert.)
C. Fred Underwood, 1500 Siskiyou Avenue, Medford, Oregon 97501
Chloe Underwood, 1500 Siskiyou Avenue, Medford, Oregon 97501
Jack D. Canon, 2829 Jacksonville Highway, Medford, Oregon 97501

Standard Distribution